

### Remarks

Reconsideration of the captioned application as amended herewith and in view of the following Remarks and Arguments is respectfully requested.

#### I. Status of the Claims

Claims 1 - 3, 5 and 6 are pending in the application. Claims 11-15 have been canceled, however, Applicants retain the right to file these claims in a continuing application. Claim 1 has been amended to further define that the composition is topically applied to wind burned skin or skin that is red or inflamed due to (i) contact with irritating soaps or cleansers; or (ii) allergic skin reactions. No new matter has been introduced by this amendment.

#### II. The Rejection Over Tokuyama

The Examiner has rejected claims 1-3, 6, and 11-14 under 35 U.S.C. §102 (b) as being anticipated by EP 1090630 A1 ("Tokuyama"). Applicants respectfully traverse this rejection.

As amended claims 1 -3 and 6 relate to a method for ameliorating redness or inflammation of mammalian skin. The method comprises the step of topically applying a composition to wind burned skin, or skin that is red or inflamed due to (i) contact with irritating soaps or cleansers or (ii) allergic skin reactions, where the composition comprises:

- (a) from about 1.0 to about 10% by weight, based on the total composition, of a redness or inflammation reducing agent selected from an alkanolamine, tyrosine; or a mixture thereof; and
- (b) a cosmetically acceptable carrier.

In contrast, Tokuyama relates to skin conditioning compositions comprising a compound, including among others, L-arginine and ethanolamine, as a skin moisture retention agent. There is no teaching or suggestion that the skin conditioning compositions could be useful for ameliorating redness or inflammation of mammalian skin, specifically to treat wind burned skin, or skin that is red or inflamed due to (i) contact with irritating soaps or cleansers or (ii) allergic skin reactions.

As the Examiner is well aware a claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. Here, Takuyama fails to teach a method of applying a composition to wind burned skin, or skin that is red or inflamed due to contact with irritating soaps or cleanser or allergic skin reactions. Indeed, Tokuyama does not even mention wind burn, irritation caused by soaps or cleanser or allergic skin reactions. The Examiner argues that there "is no evidence to indicate that the inflamed skin conditions of the users of the Tokuyama patent are different from the recited skin conditions." However, the Examiner fails to provide support for the reasoning that the skin conditions are the same. Indeed, nothing in any of the references relied upon by the Examiner teach or suggest that the treatment for sun burn would be the same as the treatment for, for example, irritation caused by soaps or cleansers. Accordingly, Applicants have failed to establish that Tokuyama anticipates Applicants claimed invention and the rejection should be withdrawn.

### III. The Rejection over U.S. Patent No. 6,365,623

The Examiner has rejected claims 1-3, 5, 6 and 11-15 under 35 U.S.C. §102(e) as allegedly anticipated by the U.S. Patent No.6,365,623 ("the '623 patent"). Applicants respectfully traverse this rejection.

Perricone relates to a method for reducing and preventing acneiform scars and reducing pore size. The method comprises topically applying to affected skin areas a composition containing lipoic acid or a lipoic acid derivative in a dermatologically acceptable carrier.

In contrast, as amended claims 1–3, 5 and 6 relate to a method for ameliorating redness or inflammation of mammalian skin. The method comprises the step of topically applying a composition to wind burned skin, or skin that is red or inflamed due to (i) contact with irritating soaps or cleansers or (ii) allergic skin reactions. Accordingly, Perricone cannot anticipate present claims 1-3, 5 and 6.

IV. Conclusion

Applicants believe that the foregoing presents a full and complete response to the present Office Action. Applicants believe that this Response places the case in condition for allowance. Accordingly, an early and favorable response is earnestly solicited. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-525/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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